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April 8, 2024

Via CM/ECF

The Honorable Margaret M. Garnett
United States District Court
Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007

Re: *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, No. 24-cv-1363

Dear Judge Garnett:

Pursuant to Rule I(D)(3)(ii)-(iii) of Your Honor's Individual Rules and Practices, Plaintiffs fuboTV Inc. and fuboTV Media Inc. ("Fubo") respectfully request leave to file under seal and in redacted form on the public docket (i) Plaintiffs' memorandum in support of their Motion for Preliminary Injunction ("Motion"), and (ii) the supporting Declarations of David Gandler, Alberto Horihuela, Todd Mathers, John Janedis, Jonathan Orszag, and James Trautman. Fubo also respectfully requests leave to file under seal entirely the declaration of Gary Schanman, Executive Vice President of Echostar Corporation, which was provided to Fubo on an attorneys'-eyes-only basis and on the condition that Fubo seek to file it under seal.

The Parties have met and conferred in good faith about the materials to be filed under seal or with redactions and the bases for such designations. Counsel for Fubo, Thomas G. Schultz, met and conferred with counsel for The Walt Disney Company, ESPN, Inc., ESPN Enterprises, Inc., and Hulu, LLC, Antony Ryan; counsel for Fox Corporation, Steven Bizar; and counsel for Warner Bros. Discovery, Inc., Theodore Tsekerides on April 3, 2024. Defendants' counsel have indicated their consent to Fubo filing the above-listed materials under seal or with redactions.

Fubo respectfully submits that good cause exists for sealing and/or redacting the confidential materials described above, which fall into two categories: (1) Fubo's carriage agreements with Defendants and related correspondence, and (2) internal and proprietary financial analyses, marketing data, and business strategy. This information is similar or identical to information reflected in Fubo's complaint that the dedicated part judge (Judge Engelmayer) previously ordered sealed. *See fuboTV, et al v. The Walt Disney Company, et al.*, 1:24-mc-00070 (S.D.N.Y. filed Feb. 20, 2024).

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Fubo's Carriage Agreements with Defendants and Related Correspondence.

Portions of the declarations of David Gandler, Todd Mathers, Jonathan Orszag, and James Trautman (and portions of Fubo's Motion) describe the terms of Fubo's carriage agreements with the Defendants, as well as Fubo's negotiations with Defendants over those carriage agreements. This information is subject to confidentiality provisions contained in the agreements themselves and is commercially sensitive to both counterparties. Courts in this district have recognized that these sorts of contractual materials are appropriately sealed. *See Rubik's Brand Ltd. v. Flambeau, Inc.*, 2021 U.S. Dist. LEXIS 53529, at *2 (S.D.N.Y. Mar. 22, 2021) (granting motion to seal documents containing the terms of confidential trademark licensing agreements); *Skyline Steel, LLC, v. PilePro LLC*, 101 F. Supp. 3d 394, 412-13 (S.D.N.Y. 2015) (granting motion to seal emails revealing confidential negotiations between Skyline and its customers).¹

Internal Financial Analysis and Subscriber Information. Portions of the declarations of John Janedis, Alberto Horihuela, David Gandler, Jonathan Orszag, (and portions of Fubo's Motion) reflect an internal Fubo financial analysis performed by Fubo CFO John Janedis and his team to analyze the impact of Defendants' streaming joint venture on Fubo's business. This analysis was based on Fubo's proprietary financial models and data and will inform Fubo's business strategy related to the joint venture. Additionally, portions of these declarations, as well as the Declaration of James Trautman, reflect proprietary Fubo subscriber data that informs Fubo's marketing strategy. This information is highly sensitive and would cause Fubo serious harm if disclosed, and courts regularly find that such materials are appropriately sealed. *E.g., Kewazinga Corp. v. Microsoft Corp.*, 2021 WL 1222122, at *3 (S.D.N.Y. Mar. 31, 2021) (sealing confidential research and development information, marketing plans, revenue information, pricing information).²

¹ Fubo also seeks to seal in its entirety the declaration of Gary Schanman, Executive Vice President of Echostar Corporation, which was provided to Fubo on an attorneys'-eyes-only basis and on the condition that Fubo seek to file it under seal. Mr. Schanman's declaration describes carriage agreements and related discussions between Defendants and another distributor, which Fubo understands are commercially sensitive for the same reasons as Fubo's carriage agreements and related correspondence.

² *See also Skyline*, 101 F. Supp. 3d at 412; *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (advertising expenditures, strategies, policies, and sales); *GoSMiLE, Inc. v. Dr. Jonathan Levine, D.M.D. P.C.*, 769 F. Supp. 2d 630, 649-50 (S.D.N.Y. 2011) (granting motion to seal internal financial information and budgets).

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Respectfully submitted,

/s/ Thomas G. Schultz

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Cc: All Counsel of Record (via CM/ECF)